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Before the
Federal Communications Commission
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Parts 21 and 74 To Enhance)
the Ability of Multipoint Distribution Service) RM-9060
And Instructional Television Fixed Service)
Licensees to Engage in Fixed)
Two-Way Transmissions)

COMMENTS OF THE ARCHDIOCESE OF LOS ANGELES
EDUCATION AND WELFARE CORPORATION

The Archdiocese of Los Angeles Education and Welfare Corporation ("Archdiocese"), by its attorneys, hereby submits these comments in response to the above-referenced Petition for Rulemaking ("Petition"). The Petition was filed by a coalition of participants in the wireless cable industry in an effort to enhance the ability of Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) licensees to engage in fixed, two-way transmissions.^{1/}

I. INTRODUCTION

The Archdiocese has been licensed by the FCC to operate a four-channel ITFS facility from a site at Mt. Wilson for over 30 years.^{2/} The facility has been used to provide instructional, cultural, and religious programming to hundreds of parochial schools and thousands of students in the Los Angeles metropolitan area. The Archdiocese leases its excess capacity at Mt. Wilson to a wireless cable operator that has been successful in

^{1/} See Public Notice, DA 97-637 (rel. March 31, 1997) (establishing pleading cycle on the Petition). The Commission subsequently extended the deadline for comments on the Petition to May 14, 1997. Public Notice, RM-9060 (rel. Apr. 28, 1997).

^{2/} KSW-93, channels G1-G4, Los Angeles.

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coordinating the leasing and licensing of much of the available ITFS and MDS transmission capacity in Southern California. The Archdiocese also plans to enter into lease agreements for its ITFS channels in Ventura and Santa Barbara, which will enable the Archdiocese to finance the extension of its programming to its schools and parishes in nearby counties.

The Archdiocese cautiously supports the goal of the Petition -- to afford MDS and ITFS licensees the flexibility to implement spectrally efficient digital transmission techniques to meet marketplace demand for two-way interactive services. The Archdiocese wants its wireless cable partners to be viable competitors in the multichannel video programming marketplace. At the same time, the Archdiocese itself has a growing need for Internet and intranet access that could be met through the use of its licensed spectrum. However, the Commission must proceed cautiously in evaluating this extremely complex proposal, which would make wholesale changes to the rules governing ITFS.

II. DISCUSSION

The Archdiocese has reviewed a draft of comments to be filed in this proceeding by the Catholic Television Network, of which the Archdiocese is a member, and fully supports those comments. While the Archdiocese has not endeavored to analyze the specific rule changes proposed in the Petition on a section-by-section basis, it offers two principles to guide the Commission as it considers the issues raised by the Petition.

A. Preservation of Educational Use of ITFS Frequencies.

First, the Archdiocese urges the Commission to make its first priority the preservation of the primary educational purpose of ITFS. The Commission has stated that "the clear and guiding principle [in its ITFS decisions] is that the primary purpose of ITFS was at its

founding and remains to serve formal academic needs."^{3/} When the Commission decided to permit ITFS licensees to lease their excess capacity to non-ITFS entities, it still presumed that ITFS channels were "obtained, [and] primarily utilized for, satisfying a legitimate ITFS requirement," and refused to permit "any wholesale abandonment of the primary purpose [of ITFS]."^{4/} Moreover, the Commission has always been careful, in making changes to the ITFS rules, to accommodate the special needs of educational institutions.

Each step towards the commercialization of ITFS spectrum threatens to compromise its unique educational character. The Petition states that wireless cable operators "must be able to provide a competitive array of interactive communications services," and illustrates this point with references to the Wireless Communications Service (WCS), Local Multipoint Distribution Service (LMDS), and Direct Broadcast Satellite (DBS) services.^{5/} However, the analogy of ITFS to these other services is not complete, because licensees in these other services do not have a primary educational purpose. ITFS cannot become just like these other services while still serving its academic mission. The Archdiocese welcomes changes to ITFS that enhance the ability to compete with these other services, *as long as* such changes also enhance the ability of educational institutions to provide instructional and educational programming. The Commission must ensure that ITFS licensees themselves

^{3/} *Amendment of Part 74 of the Commission's Rules and Regulations In Regard to the Instructional Television Fixed Service, Second Report and Order*, 101 F.C.C.2d 50, 80 (1985).

^{4/} *Amendment of Parts 2, 21, 74, and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Service, Report and Order*, 94 F.C.C.2d 1203, 1252-53 (1983).

^{5/} Petition at 9-11.

share in the growth and development of wireless cable brought about by changes to the ITFS rules.

The fact that schools may benefit from the increased revenue stream of their newly competitive wireless cable partners is of secondary importance. In denying an earlier proposal of the Wireless Communications Association to make wireless cable more remunerative, the Commission stated:

Although [the proposal] would inarguably utilize ITFS spectrum to benefit educational institutions financially, that is not the purpose of the ITFS allocation. This portion of the scarce radio spectrum was allocated to enhance educational programs by providing space for radio transmission of educational materials.^{6/}

The Commission's approach to ITFS must continue to place educational needs over financial benefits.

B. Preservation of License Authority and Control.

Second, the Archdiocese urges the Commission to ensure that ITFS licensees retain their autonomy and control over the use of their channels. Currently, the Commission's review of ITFS leases places "primary emphasis" on the licensees' control.^{7/} This emphasis on control derives from the primary purpose of ITFS to meet the nation's educational needs.

The Petition proposes a massive shift away from the present system of government oversight towards industry control over the timing, filing, and resolution of ITFS

^{6/} *Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands, Report and Order*, 5 FCC Rcd 6410 at ¶ 36 (1990).

^{7/} *Second Report and Order, supra*, 101 F.C.C.2d at 90.

applications.^{8/} The Petition places substantial reliance on good faith negotiations among neighboring licensees and among licensees and wireless cable operators.^{9/} By its terms, the Petition would increase the burden on ITFS licensees to monitor and evaluate ITFS and MDS filings.^{10/} However, the Commission must ensure that individual licensees do not lose their freedom of choice through coercion by neighboring licensees or strong wireless cable operators. Schools have limited technical and legal resources to evaluate the anticipated large number of applications that would be filed under the new rules. As a result, schools must depend increasingly upon their wireless cable partners for such support. However, with each level of incremental reliance, a school cedes a corresponding measure of control. Licensee control must not become an illusory promise. If the government's oversight role is to be lessened, it will be more important than ever to ensure that each ITFS licensee retains total freedom to develop its system in the manner that best suits its educational needs.

^{8/} See Petition at 38 (licensees will "no longer rely solely on the Commission's staff to identify potential interference").

^{9/} See Petition at 34 ("neighboring licensees will usually negotiate in good faith"); *id.* at 36 ("deter the filing of frivolous petitions to deny").

^{10/} *Petition* at 38.

III. CONCLUSION

The Archdiocese appreciates this opportunity to comment on the Petition, and looks forward to working with the wireless cable community to achieve the goals envisioned therein.

Respectfully submitted,

THE ARCHDIOCESE OF LOS ANGELES
EDUCATION AND WELFARE CORPORATION

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